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Senate

The Senate met at 2 p.m. and was called to order by the Honorable MEL MARTINEZ, a Senator from the State of Florida.

The PRESIDING OFFICER. Today's prayer will be led by the guest Chaplain, the Reverend John Boyles, National Capital Presbytery, and former pastor of Capitol Hill Presbyterian Church.

PRAYER

The guest Chaplain offered the following prayer:

O God of all that is, or is to be: take, we pray, Your power and reign, in majesty and wisdom, here in this Chamber, on this day which You have made, reigning in this body assembled here, that all here today would follow in their own faith a path of righteousness and justice, finding in conscience a concord and peace which passes our human understanding but rests in Your glory, laud and honor, O great Creator and Lord of all generations; may Your work and will be done on Earth today, we pray Amen.

PLEDGE OF ALLEGIANCE

The Honorable MEL MARTINEZ led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 20, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MEL MARTINEZ, a Senator from the State of Florida, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. MARTINEZ thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

TERRI SCHIAVO

Mr. FRIST. Mr. President, the Congress is continuing to work to pass legislation to give Terri Schiavo another chance at life. Let me update all of our colleagues on where we are right now.

On Saturday, yesterday, we reached a bipartisan, bicameral agreement on a legislative solution. At that point, we initiated a procedural process to act on the bill, a process which brought both the House of Representatives and the Senate back today to complete action on this critically important matter.

Shortly, we will stand in recess subject to the call of the Chair. This action will allow the Senate to come back into session at a moment's notice to consider the legislation. The Senate will remain here throughout the afternoon and, if necessary, late into the evening in order to act immediately on this bill once it is ready.

Because Terri Schiavo is being denied lifesaving nutrition this very moment, time is of the essence.

Let me summarize again for everyone what the agreed-upon legislation does. Under this bill, Terri Schiavo will have another chance. She will have another opportunity to live. The bill allows Terri's case to be heard in Federal court. More specifically, it allows a Federal district judge to consider a claim on behalf of Terri Schiavo for alleged violations of constitutional rights or Federal laws relating to the withholding of food, water, or medical treatment necessary to sustain her life.

I am heartened by the way Congress is uniting in a bipartisan, bicameral way in this unique situation. Now is the time for us to act. Terri deserves it. I remain committed as leader to pass legislation to give Terri Schiavo one more chance at life.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 2:05 p.m., recessed subject to the call of the Chair and reassembled at 4:30 p.m. when called to order by the Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

THERESA MARIE SCHIAVO

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 686 introduced earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 686) for the relief of the parents of Theresa Marie Schiavo.

There being no objection, the Senate proceeded to consider the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUDICIAL DISCRETION UNDER THE SCHIAVO RELIEF BILL

Mr. LEVIN. Mr. President, I rise to seek clarification from the majority leader about one aspect of this bill, the issue of whether Congress has mandated that a Federal court issue a stay pending determination of the case.

Mr. FRIST. I would be pleased to help clarify this issue.

Mr. LEVIN. Section 5 of the original version of the Martinez bill conferred jurisdiction on a Federal court to hear a case like this, and then stated that the Federal court ''shall'' issue a stay of State court proceedings pending determination of the Federal case. I was opposed to that provision because I believe Congress should not mandate that a Federal judge issue a stay. Under longstanding law and practice, the decision to issue a stay is a matter of discretion for the Federal judge based on the facts of the case. The majority leader and the other bill sponsors accepted my suggestion that the word ''shall'' in section 5 be changed to ''may.''

The version of the bill we are now considering strikes section 5 altogether. Although nothing in the text of the new bill mandates a stay, the omission of this section, which in the earlier Senate-passed bill made a stay permissive, might be read to mean that Congress intends to mandate a stay. I believe that reading is incorrect. The absence of any state provision in the new bill simply means that Congress relies on current law. Under current law, a judge may decide whether or not a stay is appropriate.

Does the majority leader share my understanding of the bill?

Mr. FRIST. I share the understanding of the Senator from Michigan, as does the junior Senator from Florida who is the chief sponsor of this bill. Nothing in the current bill or its legislative history mandates a stay. I would assume, however, the Federal court would grant a stay based on the facts of this case because Mrs. Schiavo would need to be alive in order for the court to make its determination. Nevertheless, this bill does not change current law under which a stay is discretionary.

Mr. LEVIN. In light of that assurance, I do not object to the unanimous consent agreement under which the bill will be considered by the Senate. I do not make the same assumption as the majority leader makes about what a Federal court will do. Because the discretion of the Federal court is left unrestricted in this bill, I will not exercise my right to block its consideration.

Mr. WARNER. Mr. President, the tenth amendment to the U.S. Constitution provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This is a principle of Federalism which, I believe, is not being followed by Congress in enacting this legislation.

That the misfortunes of life vested upon Theresa Marie Schiavo are a human tragedy, no one can deny. I said my prayers, as did many Americans, as we attended religious services this Palm Sunday.

I believe it unwise for the Congress to take from the State of Florida its constitutional responsibility to resolve the issues in this case.

The Florida State court system has adjudicated the issues to date. This bill, in effect, challenges the integrity and capabilities of the State courts in Florida.

That the Federal system of courts can move properly and fairly ajudicate the equities among the diverse parties in this particular case is a conclusion with which I cannot agree.

Greater wisdom is not always reposed in the branches of the Federal Government.

Apart from constitutional issues, I am concerned for the institution of the Senate, a body in which I have been privileged to serve for over a quarter of a century.

I view service in the Senate as that of a trustee—preserve this venerable body, its traditions and time-tested precedents, for future generations. It is one of a kind in their troubled world.

The drafters of this bill endeavored to write in provisions to prevent this unique law—a private relief bill is the term used in our procedures—from becoming a ''precedent for future legislation'' (section 7).

I do not believe the legislation can, or will, block further petitions from our citizens. Who can say there are not other tragic situations across our land today; who can predict what the future may inflict by way of personal hardship upon our citizens?

I fear the door has opened and Congress, which by constitutional mandate is entrusted to pass laws for the Nation, will again and again be petitioned to deal with personal situations which are the responsibility of the several States.

I respect the views of those who drafted and moved this bill swiftly, with limited debate, through the Senate. I value the sanctity of life no less fervently than they, for I had the great fortune of being the son of a doctor who devoted his entire life to healing and caring for the sick and injured. My father's principles have been my compass for my life.

It is not easy to be in opposition to this legislation, but I have a duty to state my views in keeping with my oath to support the Constitution as I interpret it.

IN DEFENSE OF SENATE TRADITION

Mr. BYRD. Mr. President, opponents of free speech and debate claim that, during my tenure as majority leader in the United States Senate, I established precedents that now justify a proposal for a misguided attempt to end debate on a judicial nomination by a simple majority vote, rather than by a three-fifths vote of all Senators duly chosen and sworn as required by paragraph two of Senate rule XXII. Their claims are false.

Proponents of the so-called nuclear option cite several instances in which they inaccurately allege that I ''blazed a procedural path'' toward an inappropriate change in Senate rules. They are dead wrong. Dead wrong. They draw analogies where none exist and create cock-eyed comparisons that fail to withstand even the slightest intellectual scrutiny.

Simply put, no action of mine ever denied a minority of the Senate a right to full debate on the final disposition of a measure or matter pending before the Senate. Not in 1977, not in 1979, not in 1980, or in 1987—the dates cited by critics as grounds for the nuclear option. The Congressional Research Service confirms that only six amendments have been adopted since the cloture rule was enacted in 1917, and ''each of these changes was made within the framework of the existing or 'entrenched' rules of the Senate, including rule XXII.''

In none of the instances cited by those who threaten to invoke the nuclear option did my participation in any action deny the minority in the Senate, regardless of party, its right to debate the real matter at hand.

Let us examine each of these so-called precedents in greater detail.

October 3, 1977—Enforcing Senate Rule XXII Against Improper Post-Cloture Delay: In 1977, the Senate invoked cloture on S. 2104, described as ''a bill to establish a comprehensive natural gas policy.'' Shortly thereafter, two Senators began a postcloture ''filibuster by amendment,'' after a supermajority of the Senate had already chosen to invoke cloture (under the Senate rules) and had made clear its desire to bring debate on the bill to close. Though the Senate had voted to invoke cloture by an overwhelming vote of 77 to 17, two Senators nonetheless continued to offer amendments, to request quorum calls, and to offer amendments to amendments to preserve and extend time on the bill postcloture. Their efforts, as confirmed by the Chair, ran directly contrary to the purpose of rule XXII, which is to limit debate.

The tactics employed were sufficiently egregious that the Senate spent 13 days and 1 night debating the bill, which included 121 rollcalls and 34 live quorums. Cloture having been invoked by an overwhelming vote, I then made the point of order that:

> when the Senate is operating under cloture, the Chair is required to take the initiative under rule XXII to rule out of order all amendments which are dilatory or which on their face are out of order.

Critics have alleged that my actions in this instance ''cut off debate'' and somehow constitute a precedent for ending a filibuster of a judicial nominee by 51 votes before cloture has been invoked. But that argument is erroneous.

The Senate was operating postcloture. The Senate had voted 77 to 17 to end debate. I didn't do that; the Senate took that action.

If anything, my actions clarified that rule XXII means what it says. The text of rule XXII provides explicitly that, once cloture is invoked, ''no dilatory motion, or dilatory amendment, or amendment not germane shall be in order.'' Therefore, once Members have voted to invoke cloture, dilatory amendments or actions are simply out of order. Senators still retain their hour of postcloture debate. Senators still have the right of appeal.

Some have falsely alleged that I even acted to impede debate on that appeal,

but they are mistaken yet again: Under the provisions of rule XXII, appeals from rulings of the Chair were not and are not debatable postcloture.

Nothing that was done in 1977 changed rule XXII or sent a shock wave through the Senate. Nothing that was done restricted the right of Senators to wage a filibuster against a nominee or legislation before cloture is invoked. No action taken affected the fundamental right of Senators to debate the natural gas deregulation bill; they had already debated the bill and, of their own volition, had decided to end their debate by an overwhelming vote. Instead, I sought to end dilatory tactics postcloture, when such tactics were, and remain today, prohibited by the plain text of paragraph two of rule XXII. I simply sought a ruling from the Chair to enforce Senate rule XXII.

In fact, when, in 1977, my point of order was sustained, the Chair in so doing noted that the point of order was consistent with the purpose of rule XXII, which ''is to require action by the Senate on a pending measure following cloture within a period of reasonable dispatch.'' When the Chair's ruling in support of my point of order was thereafter appealed, that appeal was tabled in the Senate by another overwhelming vote of 79 to 14.

No Member of the minority in the Senate lost his right to debate the natural gas deregulation bill. Their ability to debate the bill was not tampered with or impeded in any way. Each Senator retained the right to debate, under the Senate rules, the bill both precloture and in the hour that was provided to each Senator under rule XXII postcloture.

Thus, contrary to current assertions, in 1977, a strong, bipartisan, supermajority of the Senate, supported by, among others, Minority Leader Howard Baker and myself, endorsed this necessary effort to halt postcloture dilatory tactics consistent with Rule XXII of the Standing Rules of the Senate. That is completely unlike the so-called nuclear option that is currently being discussed by some in the Senate. I sought to enforce rule XXII; not to destroy it.

January 15, 1979—Enforcing Rule XXII Against Improper Post-Cloture Delay: At the beginning of the new Congress in 1979, I, as Senate majority leader, introduced a resolution to make various changes to Senate rule XXII, the bulk of which addressed circumstances postcloture. Recently, on March 10, 2005, a Senator spoke on the Senate floor and stated that this resolution serves as a precedent for the nuclear option. However, my resolution served to enforce rule XXII, not to destroy it. My introduction of S. Res. 9 was influenced by the postcloture dilatory tactics that were suffered by the Senate during its consideration of the natural gas deregulation bill during the preceding Congress.

My efforts in that regard were supported, on a bipartisan basis, by Minority Leader Howard Baker who stated in response to my introduction of S. Res. 9:

> I point out, as I am sure most of our colleagues are aware and will recall, that in the case of the most recent post-cloture filibuster, it was the majority leader and the minority leader, with the distinguished occupant of the chair, the Vice President, in the chair at the time, who managed to establish a line and series of precedents that created the possibility to at least accelerate the disposition of the controversy and conflict.
>
> The point of the matter is that this is not, nor has it been, a matter that is purely partisan in its character. . . .

He added:

> I share with the majority leader the belief that the post-cloture filibuster, a creature of fairly young age and recent development, is one that the Senate has not focused on adequately. I am prepared to do that and I want to do that.

As the minority leader in the Senate recognized at the time, the text of rule XXII provides explicitly that, once cloture is invoked, ''no dilatory motion, or dilatory amendment, or amendment not germane shall be in order.'' Therefore, once Members vote to invoke cloture, dilatory amendments or actions are impermissible. No proposal of mine in 1979 restricted the right of Senators to filibuster a nominee or a piece of legislation prior to the invocation of cloture, consistent with Rule XXII of the Standing Rules of the Senate. And the position I took at the time enjoyed support on both sides of the aisle.

November 9, 1979—Strengthening Rule XVI Against Legislation on Appropriations Bills: Opponents of free speech and debate in the Senate cite a third event as a supposed basis for their proposed ''nuclear option.'' In November 1979, during consideration of a Department of Defense Appropriations bill, Senator Stennis raised a point of order that an amendment to change the rate of pay for military personnel, which had been offered by Senator Armstrong, constituted legislation on an appropriations bill and was therefore out of order under the express terms of Senate rule XVI. Legislative amendments to appropriations bills violate Senate rule XVI. However, by precedent, the ''defense of germaneness'' arose. According to this practice, which evolved outside the text of rule XVI, if the House has acted first to ''open the door'' to legislate on an appropriations measure, a Senator could respond with a legislative amendment, provided that it is germane to some House legislative language. If a point of order were made that an amendment constituted legislation, a ruling by the Chair on that question would be preempted by a vote on the germaneness of the amendment to the House language. This practice was justified only if the House had included legislative language in its bill. But this practice made a mockery of the rule if the House had not included any legislative language.

When Senator Stennis raised the point of order that the Armstrong amendment constituted legislation on an appropriations bill, Senator Armstrong asserted the defense of germaneness, meaning that his amendment was germane because it was relevant to the House bill. At that point, I made the following point of order:

> I make the point of order that this is a misuse of the precedents of the Senate, since there is no House language to which this amendment could be germane and that, therefore, the Chair is required to rule on the point of order as to its being legislation on an appropriation bill and cannot submit this question of germaneness to the Senate.

I was concerned that, as a threshold matter, the amendment should not be considered because there was no House language to which the proposed amendment could possibly be germane. The Chair noted that while this was a case of first impression, my point was ''well taken,'' and he sustained my point of order. Senator Armstrong then appealed the ruling of the Chair, and I moved to table that appeal. My motion was adopted by the Senate.

Critics claim that my actions in this instance were contrary to the plain language of rule XVI, because rule XVI at paragraph four states, ''all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate.'' But their assertion that I acted in a manner contrary to rule XVI is false.

My point of order went not to the issue of legislating on an appropriations bill, but to a different issue: The concept of ''defense of germaneness.'' Nowhere in rule XVI is there a reference to the concept of ''defense of germaneness.'' The source and subsequent application of defense of germaneness and its threshold test is not rooted in any Senate rule. Instead, it dates back to a precedent, which is identified by Riddick's Senate Procedure as a ''theory,'' which was ''enunciated'' by Vice President Marshall in 1916, that, ''Notwithstanding the rule of the Senate . . . when the House of Representatives opens the door and proceeds to enter upon a field of general legislation . . . the Chair is going to rule, but of course the Senate can reverse the ruling of the Chair, that the House having opened the door the Senate of the United States can walk through the door and pursue the field.''

Second, my efforts were to avoid the misuse of precedent and thereby enforce the express provisions of Senate rule XVI, which prohibits legislation on an appropriations bill. It is only by precedent that germaneness justified a legislative amendment on an appropriations bill, and only if the House opened the door. My goal was to preserve proper precedent and strengthen rule XVI; not to weaken it, as the nuclear option would do to rule XXII. My actions did not establish any precedent to destroy the right of extended debate in the Senate. In fact, the Senate's action affected only the ability to offer certain amendments to particular legislation, and, even then, the Senate minority's rights to appeal a ruling of the Chair were fully preserved.

March 5, 1980—Enhancing the Right of Debate of Nominations on the Executive Calendar: Critics of extended debate also reference a motion I made in 1980 to proceed directly to a nomination on the Executive Calendar. They claim that this created a precedent making a motion to proceed to any nomination on the Executive Calendar nondebatable. It did no such thing.

At the time, a nondebatable motion to go into executive session automatically put the Senate on the first treaty on the Executive Calendar. This meant that moving to the Executive Calendar required consideration of treaties before nominations, simply because the Senate's Executive Calendar prints both treaties and nominations in the order in which they are reported out of their respective committees of jurisdiction, and treaties are then printed in the first section of the Calendar.

But the placement of treaties and nominations on the Senate Calendar was not and is not based on any great precedent or legal requirement that would elevate treaties to a position of prominence greater than nominations. Instead, the placement of treaties and nominations on the Senate Executive Calendar is simply the result of a clerical printing convention. There has never been a logical reason for the Senate to distinguish between a motion to proceed to a nomination and a motion to proceed to the first treaty. Because there is no substantive reason that the Senate should have to go to treaties before being able to consider a nomination, it seemed logical that the Senate should be able to proceed directly to a nomination on the Executive Calendar.

My motion to proceed directly to the first nomination, rather than a treaty, did not inhibit or frustrate Senate debate in any way. The Chair explicitly confirmed that it did not contravene any precedent or Standing Rule of the Senate. Moreover, it also did not restrict the ability of the Senate to filibuster the nomination itself. In fact, disposition of the nomination remained, as it is today, fully debatable in several respects. A nomination remains fully debatable when it comes before the Senate, and motions to proceed from one nomination to another are also fully debatable when the Senate is in executive session.

May 13, 1987—Enforcing Rule IV Against Improper Debate of a Motion To Approve the Journal: In 1987, a Republican minority led a filibuster seeking to prevent the Senate from considering a defense authorization bill. Prior to moving to the bill, I sought unanimous consent that the Journal of the preceding day ''be approved to date,'' a routine request in the course of Senate business. The Journal is the official record of the proceedings of the Senate, and under Senate rule IV, the Journal of the preceding day must be read following the prayer by the Chaplain unless, by nondebatable motion, the reading of the Journal is waived.

In this instance, Senator Dole objected to my request that the Journal be approved by unanimous consent, and the question of whether the Journal should be approved was put to a vote. Under Senate rule XII, if a Senator declines to vote during a rollcall, he or she must, at the time his or her name is called, give a reason for not voting. In an unusual occurrence, Senator Warner advised the Chair that he ''decline[d] to vote for the reason that I have not read the Journal.'' Rule XII requires that if a Senator declines to vote, the Presiding Officer must put a nondebatable question to the Senate on whether it is ''permissible for the Senator to decline his right to vote on the issue.''

The Chair called for the vote to determine whether Senator Warner should be excused from voting on the Journal. However, before that vote was completed, Senator Dan Quayle stated that he, too, declined to vote, because he said, ''I do not believe a Senator should be compelled to vote.'' The Chair asked the clerk to call the roll on whether to excuse Senator Quayle from voting, when Senator Symms stated that he, too, declined to vote for the same reason. At this point, there were four Senate votes pending. if additional Senators in the Chamber similarly chose to decline to vote, seriatim, the process could have continued forever.

Recognizing that, just a bit over a year previously, the Senate had deliberately amended rule IV to make the motion to approve the Journal a nondebatable motion, I made a point of order that the requests of the Senators to decline to vote were not in order. I stated:

> that in amending rule IV, the Senate intended that a majority of the Senate could resolve the question of the reading of the Journal. I make my point of order that a request of a Senator to be excused from voting on a motion to approve the Journal is, therefore, out of order and that the Chair proceed immediately, without further delay, to announce the vote on the motion to approve the Journal.

Through a series of subsequent motions and votes, I prevailed in rectifying what I observed at the time was an extraordinary situation illustrated by a series of, in essence, ''votes within a vote.''

Contrary to erroneous allegations by some, my actions in this regard did not set a precedent that ''changed Senate procedure to run contrary to the plain text of a Standing Senate Rule.'' In fact, the action I took achieved exactly the opposite result: It ensured that Senate procedure would conform more closely to both the intent and the plain text of Senate rule IV.

At the time, one Senator mistakenly stated that the Chair could not entertain a unanimous consent request to suspend the application of rule XII in this instance. But that is an incorrect understanding by a Senator who was referring to rule XII, paragraph 1—where Senators cannot seek to be added to a vote that they missed, and the Chair may not do it or entertain a request to do so, a rule that was not in question and has always been strictly enforced by the Chair—not rule XII, paragraph 2, which was in dispute at the time.

Again, the actions I took were to enforce both rules IV and XII. Should I, instead, have endorsed a procedure whereby one Senator after another could simply decline to vote and put each Senator's reasons for declining to vote to another vote? Should Senators have been permitted, one after another, to decline to vote, then force a vote on each one's reason for not voting, on what is a nondebatable question in a nondebatable posture? Had I not raised a point of order against this abusive practice, it could have been used in innumerable future circumstances, and the Senate would not be able to complete a vote on any measure or matter, ever. It would, again, have made a mockery of the Senate's rules. Keep in mind that, if the tactic were ever legitimized, it could be employed to prevent a judicial nominee from ever receiving a vote.

It should be further noted that the point of order I made applies only to proceedings on motions to approve the Journal. Both the Presiding Officer and I confirmed this specifically in response to a question from Senator Alan Simpson. As I then stated:

> where Senators decline to vote on other rollcall votes in other situations—this point of order does not go to those. This point of order only goes to the unusual situation, the extraordinary circumstances, in which the Senate found itself today, when it was trying to act on a motion to approve the Journal to date, and when three Senators in succession stood to say, ''Mr. President, I decline to vote on this rollcall for the following reasons.''

Elsewhere, I also expressly stated that, ''for the legislative history,'' the precedential value of my point of order was ''confined only to that situation in which the Senate is trying to complete a vote on a motion to approve the Journal to date . . . It is confined to that very narrow purpose.''

The Senate's decision on that day was fully consistent with the text of rules IV and XII, which provides expressly that the question of whether a Senator could decline to vote, ''shall be decided without debate.'' The decision, once again, further enforced the existing rules of the Senate. This stands in stark contrast to the proposed nuclear option, which would contravene, by a simple majority vote, the express text of rule XXII, which applies to ''any measure, motion, or other matter pending before the Senate,'' and which requires an affirmative vote of three-fifths of the Senators duly chosen and sworn.

Let me state, once again, that no action of mine cited by the proponents of the nuclear options has ever denied a minority in the Senate its right to full debate on the final disposition of a measure or matter pending before the Senate.

The steps discussed here have all gone toward strengthening or enforcing

Senate rules, or clarifying the application of Senate precedents—not undermining them. The Senate has been the last fortress of minority rights and freedom of speech in this Republic for more than two centuries. I pray that Senators will pause and reflect before ignoring that history and tradition in favor of the political priority of the movement.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and the Senate proceed to a vote on passage.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 686) was passed, as follows:

S. 686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELIEF OF THE PARENTS OF THERESA MARIE SCHIAVO.

The United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

SEC. 2. PROCEDURE.

Any parent of Theresa Marie Schiavo shall have standing to bring a suit under this Act. The suit may be brought against any other person who was a party to State court proceedings relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain the life of Theresa Marie Schiavo, or who may act pursuant to a State court order authorizing or directing the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. In such a suit, the District Court shall determine de novo any claim of a violation of any right of Theresa Marie Schiavo within the scope of this Act, notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings. The District Court shall entertain and determine the suit without any delay or abstention in favor of State court proceedings, and regardless of whether remedies available in the State courts have been exhausted.

SEC. 3. RELIEF.

After a determination of the merits of a suit brought under this Act, the District Court shall issue such declaratory and injunctive relief as may be necessary to protect the rights of Theresa Marie Schiavo under the Constitution and laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

SEC. 4. TIME FOR FILING.

Notwithstanding any other time limitation, any suit or claim under this Act shall be timely if filed within 30 days after the date of enactment of this Act.

SEC. 5. NO CHANGE OF SUBSTANTIVE RIGHTS.

Nothing in this Act shall be construed to create substantive rights not otherwise secured by the Constitution and laws of the United States or of the several States.

SEC. 6. NO EFFECT ON ASSISTING SUICIDE.

Nothing in this act shall be construed to confer additional jurisdiction on any court to consider any claim related—

(1) to assisting suicide, or

(2) a State law regarding assisting suicide.

SEC. 7. NO PRECEDENT FOR FUTURE LEGISLATION.

Nothing in this Act shall constitute a precedent with respect to future legislation, including the provision of private relief bills.

SEC. 8. NO EFFECT ON THE PATIENT SELF-DETERMINATION ACT OF 1990.

Nothing in this Act shall affect the rights of any person under the Patient Self-Determination Act of 1990.

SEC. 9. SENSE OF THE CONGRESS.

It is the Sense of the Congress that the 109th Congress should consider policies regarding the status and legal rights of incapacitated individuals who are incapable of making decisions concerning the provision, withholding, or withdrawal of foods, fluid, or medical care.

Mr. FRIST. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FRIST. Mr. President, I rise today to speak about the bill we just passed that will give Terri Schiavo another chance. The bill we passed this afternoon centers on the sanctity of human life. It is bipartisan; it is bicameral. The House of Representatives is considering the exact same bill today. After the Senate and House pass this legislation, the President will immediately sign it into law.

There has been a lot of discussion about what this bill actually does. Let me point out several things.

Simply put, it allows Terri's case to be held in Federal court. The legislation permits a Federal district judge to consider a claim on behalf of Terri for alleged violations of constitutional rights or Federal laws relating to the withholding of food, water, or medical treatment necessary to sustain life.

The bill guarantees a process to help Terri but does not guarantee a particular outcome. Once a new case is filed, a Federal district judge can issue a stay at any time 24 hours a day. A stay would allow Terri to be fed once again. The judge has discretion on that particular decision. However, I would expect that a Federal judge would grant the stay under these circumstances because Terri would need to live in order for the court to consider the case. If a new suit goes forward, the Federal judge must conduct what is called de novo review of the case. De novo review means the judge must look at the case anew. The judge need not rely on or defer to the decision of previous judges.

The judge also may make new findings of fact, and from a practical standpoint this means that in a new case the judge can reevaluate and reassess Terri's medical condition.

I would like to make a few other points about the bill.

First, it is a unique bill passed under unique circumstances that should not serve as a precedent for future legislation.

Second, this bill would not impede any State's existing laws regarding assisted suicide.

Finally, in this bill Congress acknowledges that we should take a closer look in the future at the legal rights of incapacitated individuals.

While this bill will create a new Federal cause of action, I still encourage the Florida Legislature to act on Terri's behalf. This new Federal law will help Terri, but it should not be her only remaining option.

Remember, Terri is alive. Terri is not in a coma. Although there is a range of opinions, neurologists who have examined her insist today that she is not in a persistent vegetative state. She breathes on her own just like you and me. She is not on a respirator. She is not on life support of any type. She does not have a terminal condition.

Moreover, she has a mom and a dad and siblings, her closest blood relatives, who love her, who say she is responsive to them, who want her to live, and who will financially support her. These are the facts.

We in the Senate recognize that it is extraordinary that we, as a body, act. But these are extraordinary circumstances that center on the most fundamental of human values and virtues—the sanctity of human life.

The level of cooperation and thoughtful consideration surrounding this legislative effort on behalf of my colleagues has truly been remarkable. I thank Senate minority leader HARRY REID for his leadership on this issue. He and I have been in close contact throughout this process. I also thank my Democratic colleagues who expressed their concerns but have allowed us to move forward. In particular, I thank Senators MEL MARTINEZ, RICK SANTORUM, TOM HARKIN, and KENT CONRAD for their dedication in shepherding this legislation. This is bipartisan, bicameral legislation.

CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND HOUSE OF REPRESENTATIVES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Con. Res. 23, the adjournment resolution, which is at the desk. I further ask that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 23) was agreed to, as follows:

S. CON. RES. 23

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns on any day from Sunday, March 20, 2005, through Sunday, April 3, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, April 4, 2005, or until such other time as may be specified by the Majority Leader or his designee

in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on any day from Sunday, March 20, 2005, through Monday, April 4, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, April 5, 2005, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Minority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

ORDER FOR RECORD TO REMAIN OPEN

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the Senate's adjournment, the RECORD remain open for statements only on Monday, March 21, from 11 a.m. until 5 p.m.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

THE PASSING OF PAT OKURA

● Mr. INOUYE. Mr. President, on January 30, 2005, America lost a pioneer and leader in civil rights, human rights and mental health. Among his many accomplishments, Mr. K. Patrick Okura served as president of the Japanese American Citizens League, JACL, between 1962 and 1964 and led the JACL into a new era of civil rights activism. Pat was also an active board member of the Asian Pacific American Heritage Council and dedicated himself to nurturing the growth of the Asian Pacific American community. In addition, Pat had a long and distinguished career in mental health and helped found the Asian American Psychological Association.

On February 11, 2005, a memorial service was held for Pat in Bethesda, MD. At this memorial service, an eloquent eulogy was presented by the current president of the JACL, Mr. John Tateishi, highlighting Pat's accomplishments, describing his character, and expressing sadness at his passing.

I feel much the same way as Mr. Tateishi does about Pat's passing. I would like to share his thoughts with you. Today, I ask that a copy of Mr. Tateishi's eulogy for Pat Okura to be printed in the RECORD.

The material follows:

EULOGY FOR K. PATRICK OKURA

If the true measure of a man is seen in his actions rather than in the words he speaks, then Pat Okura is a giant among us today. He was someone who believed passionately in equality and the rights of individuals, and more importantly, he spent a lifetime fighting for those things he believed in so strongly.

Some 30 years ago, when we were all so much younger, Pat and I talked long into the night at a JACL convention, and it was then that I first got to know something about this remarkable man. He told me about the things that had shaped his life: his days at UCLA, meeting and marrying his lovely wife Lily, those miserable days imprisoned and living as newlyweds in a horse stall at the Santa Anita race track, life at Boys Town in Omaha, and the post-war years. And apart from his life with Lily, he told me the one event that shaped his view of the world more than any other was the injustice of the internment. As a result, he spent the rest of his life fighting against racism and social injustice and always tried to ensure justice in this world, especially for those who were the least able to fight for themselves.

The one thing that is legendary about Pat was his love of mentoring young people. He would always tell the stories of his life, not to talk about himself, but to impart wisdom from those experiences, to use the stories of his life as a way to teach and guide the young people who came to him for his help. He loved to counsel, advise, to mentor the young, and he always, without hesitation, extended a helping hand. There are countless numbers of us who have benefited from his generosity and kindness. That was one of the hallmarks of his life.

In 1962, Pat was elected as the National President of JACL, and during his term of office, he led the JACL into a new era of civil rights. A year after winning election as the organization's president, he convened a meeting of the JACL's National Board in Washington D.C., the first time the Board had ever met anywhere other than at its national headquarters in its 64 year history. He did so to urge the JACL Board to support the now historic March on Washington, led by the Reverend Martin Luther King, Jr.

In order to put that into context, it should be noted that in 1963, the notion of civil rights was not yet part of the popular lexicon of the American vernacular. At that time, it was viewed as a radical movement by upstart blacks and radical students from the north, and the idea of civil rights for non-whites created discomfort in the hearts of many in this country. Certainly, for the JACL, moderate at best, being part of the civil rights movement was a radical idea.

So in 1963, when Pat passionately cajoled the JACL National Board into supporting the march and proudly marched with Dr. King in the Nation's Capitol, he moved the JACL into a new era—from an organization that looked inward to its own community to one that reached out to any individuals or groups in this country victimized by social injustice.

We in the JACL have been fortunate to have known Pat as a friend, a colleague, and a leader. For a brief moment, he was given to us, and we are proud to have had him as one of us to have been a part of his life. He will be sorely missed, and his passing leaves a gaping void that cannot easily be filled. Legends among us are passing, and how do we possibly replace them? The likes of Patrick Okura simply cannot be replaced. He was too remarkable.

Lily, on this day of mourning, we thank you for sharing Pat with us. Our thoughts are with you as we celebrate the incredible life of a wonderful human being and a good friend.●

SENATE PASSAGE OF THE TERRI SCHIAVO BILL

● Mr. TALENT. Mr. President, I believe in the dignity and value of life at all stages and I strongly supported the legislation to help Terri Schiavo. Doctors have said that Terri is not in a persistent vegetative state and there is a lot of evidence that she would improve if she can get the care her family wants to give her.

It is not uncommon in cases where there has been a miscarriage of justice for the Congress to pass private bills. Our actions are consistent with the will of the people of Florida who have been repeatedly frustrated by the State courts. We have a chance to allow this young woman to live under the nurturing of her parents and to improve her condition.

On Sunday, March 20, the Senate passed the Terri Schiavo bill. The House passed the bill early on Monday, March 21, by a vote of 203–58 and President Bush signed the bill into law less than an hour later.

The legislation will allow Federal courts to hear a claim on behalf of Terri Schiavo by her parents, Robert and Mary Schindler, alleging a violation of their daughter's rights under the Constitution or Federal law relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.●

TRIBUTE TO SIDNEY A. GOODMAN

● Mr. COLEMAN. Mr. President, it broke my heart to miss my good friend Sidney Goodman's birthday today. So I wanted to memorialize this great occasion in a way that would be remembered. As I told Sidney in a letter, if he hadn't made something out of me, I would be there to celebrate with him instead of working here in Washington.

Thomas Jefferson said that, ''The test of every generation is giving a better world to its children than it got from its parents.'' By that standard, Sidney is one of the greatest of the Greatest Generation.

As you well know, it is not the years of life but the life in years that counts. Sidney has lived many years and lived them to the hilt. He has poured so much love and energy into those around him, including me. I hope he can receive all the richly deserved honor bestowed on him on this special day. He is 1 in 5 billion.

Sidney A. Goodman is the quintessential entrepreneur, with heart.

His charisma instantly draws people, and his expectations encourage them to become the very best they can be. His uncanny business sense makes him the consummate deal maker and natural leader. His honesty, integrity and warmth have cultivated thousands of business relationships that have become genuine friendships.

These abilities enabled him to set the foundation of what would become the Goodman Group, one of the Nation's most unique and innovative privately held companies, in which he is still actively involved today. The Goodman Group is made up of: Sage Company, which has communities in 11 States

and has been a national leader in developing and managing commercial properties, residential and senior living communities, and health care facilities since the 1970s. Sage is actually an acronym for Sidney Albert Goodman Enterprises; John B. Goodman Limited Partnership, a development and design company; Sage Travel, a full-service travel agency.

Sidney started this organization from a single real estate holding which he acquired in 1952. At that time, he had a Hamms beer distributorship, which was very successful. However, when Hamms was purchased in 1970, he preferred to run his own business. So, like any good entrepreneur, he sold it back to them and focused on developing his real estate business, Sage Company.

Through his business dealings, Sidney has been a mentor to hundreds of people over the years. He attentively listens to their challenges and offers guidance based on knowledge that can only be gained through experience. He does more than simply ask people to carry out an action; he explains why, based on wisdom that can only be attained from decades as a successful businessman.

Sidney is generous with his knowledge, the most valuable asset anyone can have, because he genuinely cares about people. Whether they are an assistant or a company president, he sincerely wants to know about their life, their hopes, and dreams. He loves to give people the opportunity to challenge themselves and expand their horizons. And when they think they can't succeed, he is there to tell them they can. And they do.

While Sidney is undoubtedly a very successful businessman, it is this concern for every individual that makes him an exceptional human being.

I am proud to be Sidney Goodman's friend and I wish him a happy and blessed birthday celebration.●

MESSAGE FROM THE HOUSE

At 3:33 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its clerks, announced that it has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3. An act to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

The message also announced that pursuant to 22 U.S.C. 1928a, the order of the House of January 4, 2005, and clause 10 of rule 1, the Speaker appoints the following Members of the House of Representatives to the United States Group of the North Atlantic Assembly: Mr. TANNER of Tennessee, Mr. ROSS of Arkansas, Mr. CHANDLER of Kentucky, and Mrs. TAUSCHER of California.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1332. An act to amend title 28, United States Code, to provide for the removal to Federal court of certain State court cases involving the rights of incapacitated persons, and for other purposes; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. FRIST (for himself, Mr. MARTINEZ, and Mr. SANTORUM):

S. 686. A bill to provide for the relief of the parents of Theresa Marie Schiavo; considered and passed.

By Mr. BURNS (for himself, Mr. WYDEN, Mrs. BOXER, and Mr. NELSON of Florida):

S. 687. A bill to regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CORNYN:

S. Res. 92. A resolution expressing the sense of the Senate that judicial determinations regarding the meaning of the Constitution of the United States should not be based on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the Constitution of the United States; to the Committee on the Judiciary.

By Mr. FRIST (for himself and Mr. REID):

S. Con. Res. 23. A concurrent resolution providing for a conditional adjournment or recess of the Senate, and a conditional adjournment of the House of Representatives; considered and agreed to.

By Mr. GRAHAM (for himself, Mr. ALLEN, Mr. JOHNSON , Mr. CHAMBLISS, Mr. KYL, Mr. BOND, Mr. INHOFE, Mr. COBURN, Mr. DORGAN, and Mr. SCHUMER):

S. Con. Res. 24. A concurrent resolution expressing the grave concern of Congress regarding the recent passage of the anti-secession law by the National People's Congress of the People's Republic of China; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FRIST (for himself, Mr. MARTINEZ, and Mr. SANTORUM):

S. 686. A bill to provide for the relief of the parents of Theresa Marie Schiavo; considered and passed.

Mr. FRIST. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELIEF OF THE PARENTS OF THERESA MARIE SCHIAVO

The United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

SEC. 2. PROCEDURE.

Any parent of Theresa Marie Schiavo shall have standing to bring a suit under this Act. The suit may be brought against any other person who was a party to State court proceedings relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain the life of Theresa Marie Schiavo, or who may act pursuant to a State court order authorizing or directing the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. In such a suit, the District Court shall determine de novo any claim of a violation of any right to Theresa Marie Schiavo within the scope of this Act, notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings. The District Court shall entertain and determine the suit without any delay or abstention in favor of State court proceedings, and regardless of whether remedies available in the State courts have been exhausted.

SEC. 3. RELIEF.

After a determination of the merits of a suit brought under this Act, the District Court shall issue such declaratory and injunctive relief as may be necessary to protect the rights of Theresa Marie Schiavo under the Constitution and laws of the United States relating to the withholding or withdrawal of foods, fluids, or medical treatment necessary to sustain her life.

SEC. 4. TIME FOR FILING.

Notwithstanding any other time limitation, any suit or claim under this Act shall be timely if filed within 30 days after the date of enactment of this Act.

SEC. 5. NO CHANGE OF SUBSTANTIVE RIGHTS.

Nothing in this Act shall be construed to create substantive rights not otherwise secured by the Constitution and laws of the United States or of the several States.

SEC. 6. NO EFFECT ON ASSISTING SUICIDE.

Nothing in this Act shall be construed to confer additional jurisdiction on any court to consider any claim related—

(1) to assisting suicide, or

(2) a State law regarding assisting suicide.

SEC. 7. NO PRECEDENT FOR FUTURE LEGISLATION.

Nothing in this Act shall constitute a precedent with respect to future legislation, including the provision of private relief bills.

SEC. 8. NO EFFECT ON THE PATIENT SELF-DETERMINATION ACT OF 1990.

Nothing in this Act shall affect the rights of any person under the Patient Self-Determination Act of 1990.

SEC. 9. SENSE OF THE CONGRESS.

It is the Sense of Congress that the 109th Congress should consider policies regarding the status and legal rights of incapacitated individuals who are incapable of making decisions concerning the provision, withholding, or withdrawal of foods, fluid, or medical care.

By Mr. BURNS (for himself, Mr. WYDEN, Mrs. BOXER, and Mr. NELSON of Florida):

S. 687. A bill to regulate the unauthorized installation of computer software, to require clear disclosure to

computer users of certain computer software features that may pose a threat to user privacy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. Mr. President, I rise today to introduce the SPYBLOCK bill, along with my good friend Senator WYDEN of Oregon.

The SPYBLOCK bill will help reduce one of the most damaging practices in the online world today—spyware, or computer software downloaded onto a computer without the user's permission or awareness—that then is often used to illicitly gather personal information, assist in identity theft, track a user's keystrokes or monitor browsing behavior.

It is hard to overstate the potential damage that Spyware can do in cyberspace if it is allowed to grow unchecked. It could cripple e-commerce, because consumers would be afraid to make their financial or other personal data available on-line. It could damage the activities of businesses large and small, by making their data or computer systems vulnerable to attack and abuse. It could fuel the growth of whole new categories of cybercriminals. The recent data theft incidents at ChoicePoint, Bank of America, and others only underscore the need for a much more proactive policing of cyberspace.

The SPYBLOCK bill will give Federal enforcement authorities additional tools to curb spyware. It also bans adware programs that conceal their operation or purpose from users, because every consumer should have a reasonable opportunity to consent to the installation of software that generates pop-up ads on his or her computer.

We have worked hard on this bill, and consulted extensively with industry and consumer groups to ensure all perspectives on this growing problem were heard. The issues are not new to the members of the Commerce Committee either, as this bill is very similiar to one we marked up toward the end of the last Congress.

I look forward to working with my colleagues in the Commerce Committee and the full Senate to ensure prompt passage of this important measure. I thank my colleague Senator WYDEN again for his work on this bill, and I yield back the balance of my time.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 687

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Software Principles Yielding Better Levels of Consumer Knowledge Act'' or the ''SPY BLOCK Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. PROHIBITED PRACTICES RELATED TO SOFTWARE INSTALLATION IN GENERAL.

(a) SURREPTITIOUS INSTALLATION.—

(1) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to cause the installation of software on the computer in a manner that—

(A) conceals from the user of the computer the fact that the software is being installed; or

(B) prevents the user of the computer from having an opportunity to knowingly grant or withhold consent to the installation.

(2) EXCEPTION.—This subsection does not apply to—

(A) the installation of software that falls within the scope of a previous grant of authorization by an authorized user;

(B) the installation of an upgrade to a software program that has already been installed on the computer with the authorization of an authorized user;

(C) the installation of software before the first retail sale and delivery of the computer; or

(D) the installation of software that ceases to operate when the user of the computer exits the software or service through which the user accesses the Internet, if the software so installed does not begin to operate again when the user accesses the Internet via that computer in the future.

(b) MISLEADING INDUCEMENTS TO INSTALL.—It is unlawful for a person who is not an authorized user of a protected computer to induce an authorized user of the computer to consent to the installation of software on the computer by means of a materially false or misleading representation concerning—

(1) the identity of an operator of an Internet website or online service at which the software is made available for download from the Internet;

(2) the identity of the author, publisher, or authorized distributor of the software;

(3) the nature or function of the software; or

(4) the consequences of not installing the software.

(c) PREVENTING REASONABLE EFFORTS TO UNINSTALL.—

(1) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to cause the installation of software on the computer if the software cannot subsequently be uninstalled or disabled by an authorized user through a program removal function that is usual and customary with the user's operating system, or otherwise as clearly and conspicuously disclosed to the user.

(2) LIMITATIONS.—

(A) AUTHORITY TO UNINSTALL.—Software that enables an authorized user of a computer, such as a parent, employer, or system administrator, to choose to prevent another user of the same computer from uninstalling or disabling the software shall not be considered to prevent reasonable efforts to uninstall or disable the software within the meaning of this subsection if at least 1 authorized user retains the ability to uninstall or disable the software.

(B) CONSTRUCTION.—This subsection shall not be construed to require individual features or functions of a software program, upgrades to a previously installed software program, or software programs that were installed on a bundled basis with other software or with hardware to be capable of being uninstalled or disabled separately from such software or hardware.

SEC. 3. INSTALLING SURREPTITIOUS INFORMATION COLLECTION FEATURES ON A USER'S COMPUTER.

(a) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to—

(1) cause the installation on that computer of software that includes a surreptitious information collection feature; or

(2) use software installed in violation of paragraph (1) to collect information about a user of the computer or the use of a protected computer by that user.

(b) AUTHORIZATION STATUS.—This section shall not be interpreted to prohibit a person from causing the installation of software that collects and transmits only information that is reasonably needed to determine whether or not the user of a protected computer is licensed or authorized to use the software.

(c) SURREPTITIOUS INFORMATION COLLECTION FEATURE DEFINED.—For purposes of this section, the term ''surreptitious information collection feature'' means a feature of software that—

(1) collects information about a user of a protected computer or the use of a protected computer by that user, and transmits such information to any other person or computer—

(A) on an automatic basis or at the direction of person other than an authorized user of the computer, such that no authorized user knowingly triggers or controls the collection and transmission;

(B) in a manner that is not transparent to an authorized user at or near the time of the collection and transmission, such that no authorized user is likely to be aware of it when information collection and transmission are occurring; and

(C) for purposes other than—

(i) facilitating the proper technical functioning of a capability, function, or service that an authorized user of the computer has knowingly used, executed, or enabled; or

(ii) enabling the provider of an online service knowingly used or subscribed to by an authorized user of the computer to monitor or record the user's usage of the service, or to customize or otherwise affect the provision of the service to the user based on such usage; and

(2) begins to collect and transmit such information without prior notification that—

(A) clearly and conspicuously discloses to an authorized user of the computer the type of information the software will collect and the types of ways the information may be used and distributed; and

(B) is provided at a time and in a manner such that an authorized user of the computer has an opportunity, after reviewing the information contained in the notice, to prevent either—

(i) the installation of the software; or

(ii) the beginning of the operation of the information collection and transmission capability described in paragraph (1).

SEC. 4. ADWARE THAT CONCEALS ITS OPERATION.

(a) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to cause the installation on that computer of software that causes advertisements to be displayed to the user without a label or other reasonable means of identifying to the user of the computer, each time such an advertisement is displayed, which software caused the advertisement's delivery.

(b) EXCEPTION.—Software that causes advertisements to be displayed without a label or other reasonable means of identification shall not give rise to liability under subsection (a) if those advertisements are displayed to a user of the computer—

(1) only when a user is accessing an Internet website or online service—

(A) operated by the publisher of the software; or

(B) the operator of which has provided express consent to the display of such advertisements to users of the website or service; or

(2) only in a manner or at a time such that a reasonable user would understand which software caused the delivery of the advertisements.

SEC. 5. OTHER PRACTICES THAT THWART USER CONTROL OF COMPUTER.

It is unlawful for a person who is not an authorized user of a protected computer to engage in an unfair or deceptive act or practice that involves—

(1) utilizing the computer to send unsolicited information or material from the user's computer to other computers;

(2) diverting an authorized user's Internet browser away from the Internet website the user intended to view to 1 or more other websites, unless such diversion has been authorized by the website the user intended to view;

(3) displaying an advertisement, series of advertisements, or other content on the computer through windows in an Internet browser, in such a manner that the user of the computer cannot end the display of such advertisements or content without turning off the computer or terminating all sessions of the Internet browser (except that this paragraph shall not apply to the display of content related to the functionality or identity of the Internet browser);

(4) modifying settings relating to the use of the computer or to the computer's access to or use of the Internet, including—

(A) altering the default Web page that initially appears when a user of the computer launches an Internet browser;

(B) altering the default provider or Web proxy used to access or search the Internet;

(C) altering bookmarks used to store favorite Internet website addresses; or

(D) altering settings relating to security measures that protect the computer and the information stored on the computer against unauthorized access or use; or

(5) removing, disabling, or rendering inoperative a security or privacy protection technology installed on the computer.

SEC. 6. LIMITATIONS ON LIABILITY.

(a) PASSIVE TRANSMISSION, HOSTING, OR LINKING.—A person shall not be deemed to have violated any provision of this Act solely because the person provided—

(1) the Internet connection, telephone connection, or other transmission or routing function through which software was delivered to a protected computer for installation;

(2) the storage or hosting of software or of an Internet website through which software was made available for installation to a protected computer; or

(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which a user of a protected computer located software available for installation.

(b) NETWORK SECURITY.—It is not a violation of section 2, 3, or 5 for a provider of a network or online service used by an authorized user of a protected computer, or to which any authorized user of a protected computer subscribes, to monitor, interact with, or install software for the purpose of—

(1) protecting the security of the network, service, or computer;

(2) facilitating diagnostics, technical support, maintenance, network management, or repair; or

(3) preventing or detecting unauthorized, fraudulent, or otherwise unlawful uses of the network or service.

(c) MANUFACTURER'S LIABILITY FOR THIRD-PARTY SOFTWARE.—A manufacturer or retailer of a protected computer shall not be liable under any provision of this Act for causing the installation on the computer, prior to the first retail sale and delivery of the computer, of third-party branded software, unless the manufacturer or retailer—

(1) uses a surreptitious information collection feature included in the software to collect information about a user of the computer or the use of a protected computer by that user; or

(2) knows that the software will cause advertisements for the manufacturer or retailer to be displayed to a user of the computer.

(d) INVESTIGATIONAL EXCEPTION.—Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

(e) SERVICES PROVIDED OVER MVPD SYSTEMS.—It is not a violation of this Act for a multichannel video programming distributor (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)) to utilize a navigation device, or interact with such a device, or to install or use software on such a device, in connection with the provision of multichannel video programming or other services offered over a multichannel video programming system or the collection or disclosure of subscriber information, if the provision of such service or the collection or disclosure of such information is subject to section 338(i) or section 631 of the Communications Act of 1934 (47 U.S.C. 338(i) or 551).

SEC. 7. FTC RULEMAKING AUTHORITY.

(a) IN GENERAL.—Subject to the limitations of subsection (b), the Commission may issue such rules in accordance with section 553 of title 5, United States Code, as may be necessary to implement or clarify the provisions of this Act.

(b) SAFE HARBORS.—

(1) IN GENERAL.—The Commission may issue regulations establishing specific wordings or formats for—

(A) notification that is sufficient under section 3(c)(2) to prevent a software feature from being a surreptitious information collection feature (as defined in section 3(c)); or

(B) labels or other means of identification that are sufficient to avoid violation of section 4(a).

(2) FUNCTION OF COMMISSION'S SUGGESTED WORDINGS OR FORMATS.—

(A) USAGE IS VOLUNTARY.—The Commission may not require the use of any specific wording or format prescribed under paragraph (1) to meet the requirements of section 3 or 4.

(B) OTHER MEANS OF COMPLIANCE.—The use of a specific wording or format prescribed under paragraph (1) shall not be the exclusive means of providing notification, labels, or other identification that meet the requirements of sections 3 and 4.

(c) LIMITATIONS ON LIABILITY.—In addition to the limitations on liability specified in section 6, the Commission may by regulation establish additional limitations or exceptions upon a finding that such limitations or exceptions are reasonably necessary to promote the public interest and are consistent with the purposes of this Act. No such additional limitation of liability may be made contingent upon the adoption of any specific wording or format specified in regulations under subsection (b)(1).

SEC. 8. ADMINISTRATION AND ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if a violation of this Act or of any regulation promulgated by the Commission under this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that section is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that section.

SEC. 9. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that this Act prohibits, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin that practice;

(B) to enforce compliance with the rule;

(C) to obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) to obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this subtitle shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of this Act, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that section.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

SEC. 10. EFFECT ON OTHER LAWS.

(a) FEDERAL LAW.—Nothing in this Act shall be construed to limit or affect in any way the Commission's authority to bring enforcement actions or take any other measures under the Federal Trade Commission Act or any other provision of law.

(b) STATE LAW.—

(1) STATE LAW CONCERNING INFORMATION COLLECTION SOFTWARE OR ADWARE.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly limits or restricts the installation or use of software on a protected computer to—

(A) collect information about the user of the computer or the user's Internet browsing behavior or other use of the computer; or

(B) cause advertisements to be delivered to the user of the computer,

except to the extent that any such statute, regulation, or rule prohibits deception in connection with the installation or use of such software.

(2) STATE LAW CONCERNING NOTICE OF SOFTWARE INSTALLATION.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that prescribes specific methods for providing notification before the installation of software on a computer.

(3) STATE LAW NOT SPECIFIC TO SOFTWARE.—This Act shall not be construed to preempt the applicability of State criminal, trespass, contract, tort, or anti-fraud law.

SEC. 11. LIABILITY PROTECTIONS FOR ANTI-SPYWARE SOFTWARE OR SERVICES.

No provider of computer software or of an interactive computer service may be held liable under this Act or any other provision of law for identifying, naming, removing, disabling, or otherwise affecting the operation or potential operation on a computer of computer software published by a third party, if—

(1) the provider's software or interactive computer service is intended to identify, prevent the installation or execution of, remove, or disable computer software that is or was installed in violation of section 2, 3, or 4 of this Act or used to violate section 5 of this Act;

(2) an authorized user of the computer has consented to the use of the provider's computer software or interactive computer service on the computer;

(3) the provider believes in good faith that the installation or operation of the third-party computer software involved or involves a violation of section 2, 3, 4, or 5 of this Act; and

(4) the provider either notifies and obtains the consent of an authorized user of the computer before taking any action to remove, disable, or otherwise affect the operation or potential operation of the third-party software on the computer, or has obtained prior authorization from an authorized user to take such action without providing such notice and consent.

SEC. 12. PENALTIES FOR CERTAIN UNAUTHORIZED ACTIVITIES RELATING TO COMPUTERS.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1030 the following:

"§ 1030A. Illicit indirect use of protected computers

''(a) Whoever intentionally accesses a protected computer without authorization, or exceeds authorized access to a protected computer, by causing a computer program or code to be copied onto the protected computer, and intentionally uses that program or code in furtherance of another Federal criminal offense shall be fined under this title or imprisoned 5 years, or both.

''(b) Whoever intentionally accesses a protected computer without authorization, or exceeds authorized access to a protected computer, by causing a computer program or code to be copied onto the protected computer, and by means of that program or code intentionally impairs the security protection of the protected computer shall be fined under this title or imprisoned not more than 2 years, or both.

''(c) A person shall not violate this section who solely provides—

''(1) an Internet connection, telephone connection, or other transmission or routing function through which software is delivered to a protected computer for installation;

''(2) the storage or hosting of software, or of an Internet website, through which software is made available for installation to a protected computer; or

''(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which a user of a protected computer locates software available for installation.

''(d) A provider of a network or online service that an authorized user of a protected computer uses or subscribes to shall not violate this section by any monitoring of, interaction with, or installation of software for the purpose of—

''(1) protecting the security of the network, service, or computer;

''(2) facilitating diagnostics, technical support, maintenance, network management, or repair; or

''(3) preventing or detecting unauthorized, fraudulent, or otherwise unlawful uses of the network or service.

''(e) No person may bring a civil action under the law of any State if such action is premised in whole or in part upon the defendant's violating this section. For the purposes of this subsection, the term 'State' includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1030 the following new item:

''1030A. Illicit indirect use of protected computers''

SEC. 13. DEFINITIONS.

In this Act:

(1) AUTHORIZED USER.—The term ''authorized user'', when used with respect to a computer, means the owner or lessee of a computer, or someone using or accessing a computer with the actual or apparent authorization of the owner or lessee.

(2) CAUSE THE INSTALLATION.—The term ''cause the installation'' when used with respect to particular software, means to knowingly provide the technical means by which the software is installed, or to knowingly pay or provide other consideration to, or to knowingly induce or authorize, another person to do so.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) COOKIE.—The term ''cookie'' means a text file—

(A) that is placed on a computer by, or on behalf of, an Internet service provider, interactive computer service, or Internet website; and

(B) the sole function of which is to record information that can be read or recognized when the user of the computer subsequently accesses particular websites or online locations or services.

(5) FIRST RETAIL SALE AND DELIVERY.—The term ''first retail sale and delivery'' means the first sale, for a purpose other than resale, of a protected computer and the delivery of that computer to the purchaser or a recipient designated by the purchaser at the time of such first sale. For purposes of this paragraph, the lease of a computer shall be considered a sale of the computer for a purpose other than resale.

(6) INSTALL.—

(A) IN GENERAL.—The term ''install'' means—

(i) to write computer software to a computer's persistent storage medium, such as the computer's hard disk, in such a way that the computer software is retained on the computer after the computer is turned off and subsequently restarted; or

(ii) to write computer software to a computer's temporary memory, such as random access memory, in such a way that the software is retained and continues to operate after the user of the computer turns off or exits the Internet service, interactive computer service, or Internet website from which the computer software was obtained.

(B) EXCEPTION FOR TEMPORARY CACHE.—The term ''install'' does not include the writing of software to an area of the persistent storage medium that is expressly reserved for the temporary retention of recently accessed or input data or information if the software retained in that area remains inoperative unless a user of the computer chooses to access that temporary retention area.

(7) PERSON.—The term ''person'' has the meaning given that term in section 3(32) of the Communications Act of 1934 (47 U.S.C. 153(32)).

(8) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(9) SOFTWARE.—The term ''software'' means any program designed to cause a computer to perform a desired function or functions. Such term does not include any cookie.

(10) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—The term ''unfair or deceptive act or practice'' has the same meaning as when used in section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(11) UPGRADE.—The term ''upgrade'', when used with respect to a previously installed software program, means additional software that is issued by, or with the authorization of, the publisher or any successor to the publisher of the software program to improve, correct, repair, enhance, supplement, or otherwise modify the software program.

SEC. 14. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 92—EXPRESSING THE SENSE OF THE SENATE THAT JUDICIAL DETERMINATIONS REGARDING THE MEANING OF THE CONSTITUTION OF THE UNITED STATES SHOULD NOT BE BASED ON JUDGMENTS, LAWS, OR PRONOUNCEMENTS OF FOREIGN INSTITUTIONS UNLESS SUCH FOREIGN JUDGMENTS, LAWS, OR PRONOUNCEMENTS INFORM AN UNDERSTANDING OF THE ORIGINAL MEANING OF THE CONSTITUTION OF THE UNITED STATES

Mr. CORNYN submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 92

Whereas the Declaration of Independence announced that one of the chief causes of the American Revolution was that King George had ''combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws'';

Whereas the Supreme court has recently relied on the judgments, laws, or pronouncements of foreign institutions to support its interpretations of the laws of the United States, most recently in Atkins v. Virginia, 536 U.S. 304, 316 n.21 (2002), Lawrence v. Texas, 539 U.S. 558, 573 (2003), and Roper v. Simmons, 125 S. Ct. 1183, 1198–99 (2005);

Whereas the Supreme Court has stated previously in Printz v. United States, 521 U.S. 898, 921 n.11 (1997), that ''We think such comparative analysis inappropriate to the task of interpreting a constitution . . .'';

Whereas the ability of Americans to live their lives within clear legal boundaries is the foundation of the rule of law, and essential to freedom;

Whereas it is the appropriate judicial role to faithfully interpret the expression of the popular will through the Constitution and laws enacted by duly elected representatives of the American people and under our system of checks and balances;

Whereas Americans should not have to look for guidance on how to live their lives from the often contradictory decisions of any of hundreds of other foreign organizations; and

Whereas inappropriate judicial reliance on foreign judgments, laws, or pronouncements threatens the sovereignty of the United States, the separation of powers, and the President's and the Senate's treaty-making authority: Now, therefore, be it

Resolved, That it is the sense of the Senate that judicial interpretations regarding the meaning of the Constitution of the United States should not be based in whole or in part on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the Constitution of the United States.

Mr. CORNYN. Mr. President, I rise to express concern over a trend that some legal scholars and observers say may be developing in our courts—a trend regarding the potential influence of foreign governments and foreign courts in the application and enforcement of U.S. law.

If this trend is real, then I fear that, bit by bit, case by case, the American people may be slowly losing control over the meaning of our laws and of our Constitution. If this trend continues, foreign governments may even begin to dictate what our laws and our Constitution mean, and what our policies in America should be.

In a series of cases over the past few years, our courts have begun to tell us that our criminal laws and criminal policies are informed, not only by our Constitution and by the policy preferences and legislative enactments of the American people through their elected representatives, but also by the rulings of foreign courts.

It is hard to believe—but in a series of recent cases, the U.S. Supreme Court has actually rejected its own prior precedents, in part because of a foreign government or court has expressed its disagreement with those precedents.

With your indulgence, I will offer just a few of the most recent examples.

Until recently, the U.S. Supreme Court had long held that the death penalty may be imposed on individuals regardless of their I.Q. The Court had traditionally left that issue untouched, as a question for the American people, in each of their States, to decide. That was what the Court said in a case called Penry v. Lynaugh (1989). Yet because some foreign governments have frowned upon that ruling, the U.S. Supreme Court has now seen fit to take that issue away from the American people. In 2002, in a case called Atkins v. Virginia, the U.S. Supreme Court held that the Commonwealth of Virginia could no longer apply its criminal justice system and its death penalty to an individual who had been duly convicted of abduction, armed robbery, and capital murder, because of testimony that the defendant was ''mildly mentally retarded.'' The reason given for the complete reversal in the Court's position? In part because the Court was concerned about ''the world community'' and the views of the European Union.

Take another example. The U.S. Supreme Court has long held that the American people, in each of their States, have the discretion to decide whether certain kinds of conduct that has been considered immoral under our longstanding legal traditions should or should not remain illegal. In Bowers v. Hardwick (1986), the Court held that it is up the American people to decide whether criminal laws against sodomy should be continued or abandoned. Yet once again, because some foreign governments have frowned upon that ruling, the U.S. Supreme Court has seen fit to take that issue away from the American people. In 2003, in a case called Lawrence v. Texas, the U.S. Supreme Court held that the State of Texas could no longer decide whether its criminal justice system may fully reflect the moral values of the people of Texas. The reason given for the complete reversal? This time, the Court explained, it was in part because it was concerned about the European Court of Human Rights and the European Convention on Human Rights.

Here's yet another example, from just a few weeks ago. Until this month, the U.S. Supreme Court had always held that 16- and 17-year-olds—like John Lee Malvo, the 17-year-old who terrorized the Washington area in a sniper spree that left 10 people dead—may be subject to the death penalty, if that is indeed the will of the people. The Court said as much in a case called Stanford v. Kentucky (1989). Yet because some foreign governments have frowned upon that ruling as well, the U.S. Supreme Court, on March 1 of this year, saw fit yet again to take this issue away from the American people. In Roper v. Simmons, the U.S. Supreme Court held that the State of Missouri could no longer apply its death penalty to 16- and 17-year-olds convicted of murder, no matter how brutal and depraved the act, and no matter how unrepentant the criminal. The reason given for this most recent complete reversal? In part because of treaties the U.S. has never even ratified, like the United Nations Convention on the Rights of the Child, and because many foreign countries disagree with the people of Missouri.

The trend may be continuing. Next Monday, March 28, the U.S. Supreme Court will consider the question whether foreign nationals duly convicted of the most heinous crimes are nevertheless entitled to a new trial—for reasons that those individuals did not even bother to mention at their first trial. As in the previous examples, the Supreme Court has actually already answered this question. In Breard v. Greene (1998), the Court made clear that criminal defendants, like all parties in litigation, may not sit on their rights and then bring up those rights later to stall the imposition of their criminal sentences. That basic principle of our legal system, the Court explained, is not undermined just because the accused happens to be a foreign national subject to the Vienna Convention on Consular Relations. Even this basic principle of American law may soon be reversed, however. Many legal experts predict that, in the upcoming case of Medellin v. Dretke, the Court may overturn itself yet again, for no other reason than that the International Court of Justice happens to disagree with our longstanding laws and legal principles. That case involves the State of Texas, and I have filed an amicus brief asking the Court to respect its own precedents as well as the authority of the people of Texas to determine its criminal laws and policies consistent with our U.S. Constitution. There is a serious risk, however, that the Court will ignore Texas law, ignore U.S. law, and ignore the U.S. Constitution, and decide in effect that the decisions of the U.S. Supreme Court can be overruled by the International Court of Justice.

There are still other examples, other decisions, where we see Supreme Court justices citing legal opinions from foreign courts all across the globe—from India, Jamaica, Zimbabwe—the list goes on and on.

I am concerned about this trend. Step by step, with every case, the American people may be losing their ability to determine what their criminal laws shall be—losing control to the control of foreign courts and foreign governments. And if this can happen with criminal law, it can also spread to other areas of our government and of sovereignty. How about economic policy? Or foreign policy? Or our decisions about security and military strategy?

I think most Americans would be disturbed if we gave foreign governments the power to tell us what our Constitution means. Our Founding Fathers fought the Revolutionary War precisely to stop foreign governments from telling us what our laws say. In fact, ending foreign control over American law was one of the very reasons given for the Revolutionary War. The Declaration of Independence specifically complains that the American Revolution is justified because King George, and I quote, ''has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws.'' After a long and bloody revolution, we earned at last the right to be free of such foreign control. It was ''We the People of the United States'' who then ordained and established a Constitution of the United States, and our predecessors specifically included a mechanism by which only ''We the People of the United States'' could change it if necessary. And of course, every Federal judge and justice swears an oath to ''faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States. So help me God.''

I am concerned about this trend. I am concerned that this trend may reflect a growing distrust amongst legal elites—not only a distrust of our constitutional democracy, but a distrust of America itself.

First, it reflects distrust of our constitutional democracy.

As every high school civics student learns, the job of a judge is pretty straightforward. Judges are supposed to follow the law, not rewrite it. Judges are supposed to enforce and apply political decisions, not make them. The job of a judge is to read and obey the words that are contained in our laws and in our judicial precedents—not the laws and precedents of foreign governments, which have no sovereign authority over our Nation.

I fear, though, that some judges simply don't like our laws, and they don't like the political decisions that are being made by the American people, through their elected representatives, about what our laws should be. So perhaps they would rather rewrite the law from the bench. What's especially disconcerting is that some judges today may be departing so far from American law, from American principles, and from American traditions, that the only way they can justify their rulings from the bench is to cite the law of foreign countries, foreign governments, and foreign cultures—because there is nothing in this country left for them to cite for support.

Moreover, citing foreign law in order to overrule U.S. policy offends democracy, because foreign lawmaking is in no way accountable to the American people.

There is an important role for international law to play in our system here in the United States, to be sure. But it is a role that belongs to the American people, through the political branches of the United States—to the Congress and to the President, to decide what role international law shall play in our legal system. It is emphatically not a role that is given to our courts. Article I of the Constitution gives Congress, not the courts, the authority to enact laws punishing ''Offenses against the Law of Nations.'' And Article II of the Constitution gives the President the power to ratify treaties, subject to the advice and consent and the approval of two-thirds of the Senate. Yet our courts are overruling U.S. law by citing foreign law decisions in which the U.S. Congress has had no role, and citing treaties that the U.S. President and the U.S. Senate have refused to approve.

To those who might say there is nothing wrong with simply trying to bring U.S. law into consistency with other nations, I say this: This is not a good faith effort to bring U.S. law into global harmony. I fear that this is simply an effort to further a particular ideological agenda. Because the record suggest that this sudden interest in foreign law is political, not legal; it seems selective, not principled. U.S. courts are following foreign law inconsistently—only when needed to achieve a particular outcome that a judge or justice happens to desire, but that is flatly inconsistent with U.S. law and precedent. Many countries, for example, provide no exclusionary rule to suppress evidence that is otherwise useful and necessary to convict criminal defendants—yet our courts have not abandoned our constitutional rule on that topic. Very few countries provide for abortion on demand—yet our courts have not abandoned our Nation's constitutional jurisprudence on that subject. Four justices of the Supreme Court believe that school choice programs to benefit poor urban communities are unconstitutional if parochial schools are eligible, even though many other countries directly fund religious schools.

Even more disconcerting than this distrust of our constitutional democracy is the distrust of America itself.

I would hope that no American would ever believe that the citizens of foreign countries are always right, and that Americans are always wrong. Yet I worry that some judges may become more and more interested in impressing foreign governments, and less and

less interested in simply following American law. Indeed, at least one Supreme Court justice has stated publicly that following foreign rulings, rather than U.S. rulings, and I quote, ''may create that all important good impression,'' and therefore, and I quote, ''over time we will rely increasingly . . . on international and foreign courts in examining domestic issues.''

This attitude is especially disturbing today. The brave men and women of our Armed Forces are putting their lives on the line in order to champion freedom and democracy not just for the American people, but for people all around the world. America today is the world's leading champion of freedom and democracy. Meanwhile, the United Nations is rife with corruption, and the United Nations Human Rights Commission is chaired by Libya.

I am disturbed by this trend, and I hope that the American people will have a chance to speak out. I believe that the American people do not want their courts to make political decisions; they want their courts to follow and apply the law as it is written. The American people do not want their courts to follow the precedents of foreign courts; they want their courts to follow U.S. law and the precedents of U.S. courts. The American people do not want their laws controlled by foreign governments; they want their laws controlled by the American government, which serves the American people. The American people do not want to see American law and American policy outsourced to foreign governments and foreign courts.

So today, I submit a sense of the Senate resolution, to give this body the opportunity to state for the record that this trend in our courts is wrong, and that American law should never be reversed or rejected simply because a foreign government or foreign court may disagree with it. This resolution is nearly identical to one that has been introduced by my colleague in the House of Representatives, Congressman TOM FEENEY. I applaud his leadership and his efforts in this area, and I hope that both the House and the Senate will come together and follow in the footsteps of our Founding Fathers, to once again defend our right as Americans to dictate the policies of our government—informed, but never dictated, by the preferences of any foreign government or tribunal. And I ask that the text of the resolution be included at the appropriate place in the RECORD.

SENATE CONCURRENT RESOLUTION 23—PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE, AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. FRIST (for himself and Mr. REID) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 23

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns on any day from Sunday, March 20, 2005, through Sunday, April 3, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, April 4, 2005, or until such other time as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on any day from Sunday, March 20, 2005, through Monday, April 4, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, April 5, 2005, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

SENATE CONCURRENT RESOLUTION 24—EXPRESSING THE GRAVE CONCERN OF CONGRESS REGARDING THE RECENT PASSAGE OF THE ANTI-SECESSION LAW BY THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA

Mr. GRAHAM (for himself, Mr. ALLEN, Mr. JOHNSON, Mr. CHAMBLISS, Mr. KYL, Mr. BOND, Mr. INHOFE, Mr. COBURN, Mr. DORGAN, and Mr. SCHUMER) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 24

Whereas, on December 9, 2003, President George W. Bush stated it is the policy of the United States to ''oppose any unilateral decision, by either China or Taiwan, to change the status quo'' in the region;

Whereas, in the past few years, the United States Government has urged both Taiwan and the People's Republic of China to maintain restraint;

Whereas the National People's Congress of the People's Republic of China passed an anti-secession law on March 14, 2005, which constitutes a unilateral change to the status quo in the Taiwan Strait;

Whereas the passage of China's anti-secession law escalates tensions between Taiwan and the People's Republic of China and is an impediment to cross-strait dialogue;

Whereas the purpose of China's anti-secession law is to create a legal framework for possible use of force against Taiwan and mandates Chinese military action under certain circumstances, including when ''possibilities for a peaceful reunification should be completely exhausted'';

Whereas the Department of Defense's Report on the Military Power of the People's Republic of China for Fiscal Year 2004 documents that, as of 2003, the Government of the People's Republic of China had deployed approximately 500 short-range ballistic missiles against Taiwan;

Whereas the escalating arms buildup of missiles and other offensive weapons by the People's Republic of China in areas adjacent to the Taiwan Strait is a threat to the peace and security of the Western Pacific area;

Whereas, given the recent positive developments in cross-strait relations, including the Lunar New Year charter flights and new proposals for cross-strait exchanges, it is particularly unfortunate that the National People's Congress adopted this legislation;

Whereas, since its enactment in 1979, the Taiwan Relations Act (22 U.S.C. 3301 et seq.), which codified in law the basis for continued commercial, cultural, and other relations between the people of the United States and the people of Taiwan, has been instrumental in maintaining peace, security, and stability in the Taiwan Strait;

Whereas section 2(b)(2) of the Taiwan Relations Act declares that ''peace and stability in the area are in the political, security, and economic interests of the United States, and are matters of international concern'';

Whereas, at the time the Taiwan Relations Act was enacted into law, section 2(b)(3) of such Act made clear that the United States decision to establish diplomatic relations with the People's Republic of China rested upon the expectation that the future of Taiwan would be determined by peaceful means;

Whereas section 2(b)(4) of the Taiwan Relations Act declares it the policy of the United States ''to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States'';

Whereas section 2(b)(6) of the Taiwan Relations Act declares it the policy of the United States ''to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan''; and

Whereas any attempt to determine Taiwan's future by other than peaceful means and other than with the express consent of the people of Taiwan would be considered of grave concern to the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

(1) the anti-secession law of the People's Republic of China provides a legal justification for the use of force against Taiwan, altering the status quo in the region, and thus is of grave concern to the United States;

(2) the President should direct all appropriate officials of the United States Government to convey to their counterpart officials in the Government of the People's Republic of China the grave concern with which the United States views the passage of China's anti-secession law in particular, and the growing Chinese military threats to Taiwan in general;

(3) the United States Government should reaffirm its policy that the future of Taiwan should be resolved by peaceful means and with the consent of the people of Taiwan; and

(4) the United States Government should continue to encourage dialogue between Taiwan and the People's Republic of China.

ORDERS FOR MONDAY, MARCH 21, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, the Senate stand in adjournment until 9:30 a.m. on Monday, March 21, unless the House adopts S. Con. Res. 23, at which time the Senate will then be in adjournment under the provisions of the

concurrent resolution until 2 p.m. on Monday, April 4, 2005. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, we are hopeful that the House of Representatives will be able to act soon on the Schiavo bill we have just passed. If they are able to pass that legislation in the form received and then pass the adjournment resolution, it would not be necessary for this body, the Senate, to return.

We will then have completed our work and will adjourn for the Easter break. If the House is unable to act and, therefore, does not adopt the adjournment resolution, then the Senate would automatically return to business tomorrow morning. I am hopeful that the House will be able to accept this bipartisan and bicameral agreement.

I thank many Members on both sides of the aisle for expediting this legislation through the Senate. First and foremost, I need to thank, once again, the Senator from Florida, the current occupant of the chair. We will now wait and monitor, over the course of the afternoon and evening, House action. In all likelihood, it will be a long evening, but we are prepared to be here as long as it takes to see that this important bill passes so it can be sent to the President immediately for his signature. Time is of the essence.

If the Senate does not need to return, I alert Members that we will have a busy legislative session after adjournment. There are a number of important matters to consider, including the supplemental appropriations that we will turn to when it becomes available.

I announced previously that no votes will occur on April 4, and therefore there is the possibility of votes on Tuesday, April 5.

Mr. President, for the record, I note that a colloquy that was printed earlier in the RECORD was between Senator LEVIN and myself. It is an important colloquy that expresses the views to which we have agreed. I should mention that many such conversations have gone on between and among all Senators on both sides of the aisle.

CONDITIONAL ADJOURNMENT OF THE SENATE

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of the adjournment resolution or under the previous order, if necessary.

There being no objection, the Senate, at 4:40 p.m., adjourned until Monday, March 21, 2005, at 9:30 a.m.